IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 7TH NOVEMBER 2006 / 16TH KARTHIKA 1928

ITA.No. 75 of 2000

ITA.827/COCH/1995 of I.T.A.TRIBUNAL,COCHIN BENCH
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APPELLANT/APPELLANT:

THE COMMISSIONER OF INCOME-TAX, COCHIN.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

RESPONDENT/RESPONDENT:

M/S. KERALA AGRO MACHINERY CORPORATION LTD.
ATHANI - 683 585.

(NO REPRESENTATION)

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 07/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

I.T. APPEAL NO.75 OF 2000

Dated this the 7th day of November, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Even though notice was served on respondent/assessee, there is no appearance. Therefore, we proceed to hear the standing counsel for appellant and dispose of the Appeal.

2. Question raised in this Appeal filed against the order of the Income Tax Appellate Tribunal disposing of the Income Tax Appeal for 1992 - 1993, is whether the payments made by assessee to Government as service charges for services rendered by Government to the Company is an allowable business expenditure. Tribunal, following another order, allowed the claim. Moreover, the appeal was disposed of along with the appeal by assessee for the year 1991 - 1992 against which I.T.A. No.70/00 was filed in this Court. Standing Counsel produced

common Judgment of this Court in ITR No.20/98 and connected cases which include ITA No.70/00 which was filed against the very same common order of Tribunal, under challenge in this appeal. This Court found that different Benches of the Tribunal with co-ordinate jurisdiction have taken divergent views in the matter. The cases were accordingly disposed of with a direction to the Tribunal to re-consider the matter afresh. It is not known whether the matter was heard or disposed of by tribunal again. In any case, since the connected case ITA No.70/00 is remanded to the Tribunal, and since the Tribunal has not considered the facts relevant for this case separately, we feel this case also should be remanded. We find from the first appellate authority's order that various services rendered by Government through its Agricultural Department which promotes sales of power tiller manufactured by respondent/assessee are considered. However, other services rendered, like

Government nominees managing the affairs of the Company by being members of the Board, Government incentives given to the agriculture sector through subsidies, loans etc. for modernisation of the agriculture sector which promotes sale of power tiller manufactured by petitioner are not seen considered in detail. In such circumstances, we set aside the order of Tribunal and remand the matter back to the Tribunal for re-consideration. We make it clear that the Tribunal should give fresh opportunity to the assessee to furnish more details pertained to detailed service rendered by Government for which the Company has paid service charges based on the demand by Government. Tribunal is directed to dispose of the appeal along with connected appeals, if not already disposed of. If the Tribunal has already disposed of other Appeals without considering relevant aspects mentioned above, then they will

dispose of this appeal separately with reference to the observations mentioned above.

The I.T. Appeal is disposed of as above.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

I.T.APPEAL NO.75 OF 2000

JUDGMENT

7th November, 2006